

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAMES EDWARD SCHMIDT,

Plaintiff,

Hon. Richard Alan Enslen

v.

Case No. 1:05-cv-00789

MARQUETTE COUNTY CIRCUIT COURT,

Defendant.

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**REPORT AND RECOMMENDATION**

On January 18, 2006, the Court entered an order setting a Rule 16 Scheduling Conference in this matter for February 27, 2006. That same day, a copy of the order was sent to Plaintiff James Edward Schmidt. Several days before the conference, in a telephone conference with Clerk's Office staff, Plaintiff claimed: 1) that he was returning all documents from the court due to "improper formatting," 2) that he therefore did not know about the scheduled conference, and 3) that he could not attend on such short notice. At his request, the conference was rescheduled and set for April 4, 2006. A copy of the notice was sent to Plaintiff and he was also notified by phone of the rescheduled hearing.

On April 4, 2006, at the scheduled time for the conference, the court and counsel for Defendant were present but Plaintiff did not appear. Nor did Plaintiff contact the court. After waiting a significant amount of time, the court noted Plaintiff's non-appearance on the record and

stated that a Report and Recommendation would issue that the matter should be dismissed for failure to prosecute.

As such, the undersigned hereby recommends that this matter be dismissed pursuant to Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1 for want of prosecution and failure to comply with the rules and orders of this court. Timely objections to this Report and Recommendation shall be considered Plaintiff's opportunity to show cause why this matter should not be dismissed.

Respectfully submitted,

Date: April 4, 2006

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).